THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition Nos.6476 of 2001
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 09th August, 2006

Between:

Mir Ahmed Ali Khan and others .. Petitioners

and

The Registrar, Special Court Constituted
under the A.P. Land Grabbing (P) Act, 1982,
B.R.K.R Bhavan, Tank Bund,
Hyderabad and others .. Respondents

Writ Petition Nos.6477 of 2001
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Between:

Mir Ahmed Ali Khan and others .. Petitioners

and

The Registrar, Special Court Constituted
under the A.P. Land Grabbing (P) Act, 1982,
B.R.K.R Bhavan, Tank Bund,
Hyderabad and others .. Respondents

and

Writ Petition Nos.8595 of 2001
(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Between:

Dr.Prem Raj and another .. Petitioners

and

The Special Court Constituted
under the A.P. Land Grabbing
(P) Act, 1982, B.R.K.R Bhavan,
Tank Bund, Hyderabad, represented
by its Registrar and others .. Respondents

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition Nos.6476, 6477 and 8595 of 2001

COMMON ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

--

Inasmuch as all the three writ petitions arise out of a common judgment, dated 22-12-2000, passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, Hyderabad, in L.G.A.Nos.16 and 56 of 1999, they can be disposed of together.

L.G.A.No.16 of 1999 was filed by the applicants, namely, Dr.Prem Raj and Anand Raj. Respondents in L.G.A.No.16 of 1999 filed L.G.A.No.56 of 1999 against the applicants. Both the appeals have been filed assailing

the judgment in O.P.No.676 of 1989, dated 16-12-1996, passed by the learned Special Tribunal-cum-Chief Judge, City Civil Court, Hyderabad. The two appellants in L.G.A.No.16 of 1999 are the applicants and the appellants in another L.G.A. are respondents therein. It is expedient to refer the parties, to avoid any confusion, as they were originally arrayed in O.P.No.676 of 1989.

The applicants claim that the land in dispute, which is an extent of 222.23 square yards covered by Sy.No.210 situate at Domalaguda Village along with other land in total admeasuring 4320 square yards was originally belonged to one Syed Masood Ali Saheb. The said Syed Masood Ali Saheb through his G.P.A. Syed Suleman Ali sold the land in dispute admeasuring 4320 square yards in favour of C.L.Modi by registered sale deed dated 21st Theer 1356 Fasli and put him in possession of the same. Dr.Modi in turn gifted a part of it, in an extent of 225 square yards, to, one, Devi Prasad, the father of the applicants, by means of a gift deed, dated 08-08-1951. Dr.Modi constructed a theater, by name, 'Liberty Theater' and number of other buildings in the remaining site thus purchased by him. The father of the first applicant had been in possession of the site gifted to him during his lifetime. He died in the year 1976 and his wife too died in the year 1981. There had been a family arrangement among the heirs including the first applicant. The property in dispute is left to both the applicants and thus they became the absolute owners thereof. The applicants let out 2.77 square yards of site from out of it to, one, Md. Ibrahim for running a pan shop on a monthly rent of Rs.10/-, which is not part and parcel of the land in dispute. The second applicant filed R.C.C.No.249 of 1982 against, one, Md.Ibrahim, his tenant, for eviction in respect of a part of the property in dispute. The learned Rent Controller allowed the R.C.C. on 24-06-1986 and the appeal carried by the tenant, as against the eviction order, ended eventually in dismissal on 13-06-1988. There has been a zinc sheet shed in the remaining site and the father of the applicants leased out the same to one Sarfaraz Khan on a monthly rent of Rs.40/- for running a cycle stand. Since the tenant committed default, R.C.No.248 of 1982 was filed against him for eviction on the file of the Principal Rent Controller, which was allowed eventually on 24-06-1986. The applicants originally filed O.S.No.1777 of 1989 against the said Ibrahim and Sarfaraz Khan. But since it was their case that they grabbed the property and were making constructions thereon, they later filed the instant application.

As against this, the case of the respondents was that the property described in the schedule appended to the application was not in existence at all and the property adjoining the "liberty theater" and abutting the main street was the property covered by a part of Sy.No.58 of old Daira village. It was their further case that the Narayanaguda Maktha, which comprises of Sy.No.58 of Daira village, was in an area of 129.79 acres along with other extents covered by other survey numbers in Gaganmahal, Nampally and Thotaguda villages. It was subject matter of a grant. A muntakhab was issued to, one, Mir Ibrahim Ali Khan, who had title over the land covered by Sy.No.58 of Daira village, now known as Himayath Nagar. The respondents filed a suit on the original side in case No.9 of 1356 Fasli in the High Court against Syed Abdul Khasim and others for declaration of their title and possession over the property covered by Sy.No.58 and the High Court eventually by its judgment, dated 17-07-1952, held that Narayanaguda Maktha, comprising of 164 acres, was a crown grant to the family of the respondents and granted succession in the name of the father of the respondents in 1344 Fasli. The petition schedule land is a part of Sy.No.58. It is a part of 400 square yards of site possessed by Mir Ibrahim Ali who died in the year 1984. The respondents 1 to 8 succeeded to the said property from their father. They in turn sold the land, which is situate towards west of the petition schedule land, to, one, E.Bapanaiah, under a registered sale deed and the said Bapanaiah has been in possession of the same. Therefore, the application is liable to be dismissed.

On the above pleadings, the learned Special Tribunal framed the issues as under:

1. Whether the land in question is *prima facie* the land of the petitioners?
2. If so, whether the respondents have not grabbed the land in question?
3. To what relief?

At the time of the enquiry, two witnesses were examined on the side of the applicants and the documents Exs.A1 to A20 were got marked. On the side of the respondents equal number of witnesses were examined and Exs.B1 to B15 were got marked. On the side of the Court, two witnesses were examined as C.Ws.1 and 2 and exhibits C1 to C8 were got marked. Appreciating the evidence on the point adduced on either side, both oral and

documentary, the learned Tribunal was of the view that the applicants were able to prove that they have title to and possession of the petition schedule land before it was grabbed by the respondents and the respondents are on the other hand failed to prove their title to the petition schedule land. Eventually, it allowed the application. However, instead of evicting the respondents, it ordered the respondents to pay the market value of the land, in an extent of 115 sq. mtrs., at the rate as recorded in the basic value register as on that date and also ordered to pay an equal amount towards compensation for the land grabbed. The application was allowed with costs of Rs.1,000/-. Having been aggrieved by the order to the extent of directing the respondents to pay the market value of the property and equal amount towards compensation, the applicants filed L.G.A.No.16 of 1999. Having been aggrieved by the order of eviction and payment of compensation, respondents filed the other L.G.A.No.56 of 1999 before the Special Court. Both the appeals were heard together and under the impugned judgment, the learned Special Court while concurring with the findings of the learned Special Tribunal, dismissed both the appeals thus confirming the judgment of the Tribunal.

The applicants filed W.P.No.8595 of 2001 assailing the concurrent finding. The respondents filed W.P.No.6476 and 6477 of 2001; one is assailing the order of eviction and the other assailing the order directing payment of market value. Since all the three writ petitions, as aforesaid, are emanating from a common judgment, they are now being disposed of together.

We have heard both the learned counsel appearing on either side and given our anxious consideration to the material placed on the record. While it is the specific case of the applicants that the land in dispute is covered by Sy.No.210 of Domalaguda Village; it is the case of the respondents that such survey number was not in existence at all and that the land in dispute is covered by Sy.No.58 of Daira Village. The respondents *inter alia* in their counter also pleaded that the properties are covered by Municipal Nos.3-6-365/A and B and that with the permission obtained from the municipality, they got a compound wall constructed all around the said property and after the construction of the compound wall, as per the wishes of their father, they gifted a part of the property in favour of Mrs.Nikhat Parveen, the wife of the G.P.A. of respondents 1 to 8, Mr.Rasheed. Earlier thereto, the respondents also obtained permission from the Municipality to construct a premises and Municipality granted permission in the year 1989 and after obtaining the said permission the donee, Mrs.Nikhat Parveen, constructed a cellar with two floors. It was their further pleading in para 7 of the counter that except the land in 100 sq. mts. retained, whereon they constructed the existing structure consisting of a cellar and two floors, the remaining portion of the land has been in possession of E.Bapanaiah and sons to whom they sold away the property. It is thus obvious that the respondents specifically pleaded that the land in dispute is covered by municipal Nos.3-6-365/A and B and that a part of it was sold to, one, E.Bapanaiah, who has been in possession of the same. Curiously, no steps have been taken on the side of the applicants to implead the said E.Bapanaiah, who is said to have been in possession of a part of the disputed land. Equally no attempt has been made to see whether the property covered by Municipal Nos.3-6-365/A and B is the property in dispute.

On the other hand, as can be seen from the case of the applicants, two rent control applications were filed against two of their tenants and obtained eviction orders. The orders of the learned Rent Controller, who directed the eviction of the tenants, have been filed in this case. But, the municipal number referred to therein appeared to be different. No attempt has been made to reconcile the discrepancy as regards the municipal number or door number, as the case may be, of the land. Perhaps, it may be a case where both parties might have clearly understood the property and there has been no dispute as regards the identity of the property in dispute. But the confusion remains having regard to the municipal number as given in the counter and the numbers which are the subject matter of the two rent control proceedings filed by the applicants against their so called tenants. On the other hand, there has been an attempt to show that the land in dispute is covered by Sy.No.210 of Domalaguda and the land covered by Sy.No.58 of Daira village is away by 1 ½ K.Ms. from the land in dispute. In this regard, a Commissioner was appointed, who submitted his report in Ex.C4 along with C5 sketch. Apart from the fact that whether the land in dispute is covered by Sy.No.210 of Domalaguda or it is covered by Sy.No.58 of Daira village, it is to be seen whether it covers the municipal number 3-6-365/A and B or municipal number as given in the two Rent Control Petitions by the applicants themselves. Unless this is sought to be clarified, the confusion remains. It is therefore necessary and expedient in the interest of justice to allow the parties to amend their pleadings properly. The applicants may also think of adding E.Bapanaiah who is said to have been in possession of a part of

the land in dispute having purchased the same from the respondents.

Sri Sharif Ahmed, learned counsel appearing for the respondents, seeks to contend that there has been a failure on the part of the Tribunal as well as the Special Court in not considering any of the documents filed on the side of the respondents in Exs.B1 to B15. The learned counsel has invited our attention to Ex.B12, letter addressed by the Mandal Revenue Officer to the Collector, Hyderabad, requesting for rectification and correction of the records pertaining to Sy.Nos.30, 10, 38 and 40 of Gaganmahal. That letter pertains to the T.S.Nos.38, 39, 10 and 40 of Gaganmahal. According to that letter, those T.S.Numbers fall within old Sy.No.58 of Daira village as per the map of 1314 Fasli. The sketch has also been marked in this case as Ex.B13, which shows the T.S.Numbers covering the lands belonged to Dr.C.L.Modi; they are in T.S.Nos.9, 18 and 20, whereas T.S.No.10 is shown as a vacant site under the heading 'abadi'. When the property is covered by specific T.S.Numbers in the application, there has been no attempt to show what is the T.S.Number that actually covers the land in dispute and on the other hand they proceed on the footing that the property in question is covered by old Sy.No.210 of Domalaguda village. Obviously, the Special Court failed to consider the significance of Exs.B12 and B15, apart from not considering all the documents filed on the side of the respondents. Failure to consider the documents filed on the side of the respondents vitiates the judgment delivered by the learned Special Court. It amounts to committing a serious jurisdictional error warranting interference by this Court under Article 226 of the Constitution of India. As discussed hereinabove, instead of making an endeavour to dispose of the case by us, it is expedient to allow the parties to amend their pleadings respectively and to implead parties, if any, who are necessary or proper parties to the proceeding in their perspective. After giving such opportunity to them and consequently to adduce further evidence, if any, the matter can be effectively disposed of. It may be mentioned here that this Court is not sitting in appeal over the judgment of the Special Court so that the error committed by the Special Court can be rectified by appreciating the evidence adduced on either side, even though there has been a failure on the part of the fora below in having not considered the documents filed on the side of the respondents. An attempt shall have to be made to consider all the documents filed on either side, so as to reach an appropriate conclusion. In that view of the matter, we are of the considered view that it is expedient in the interest of both the parties to remit the matter to the Tribunal so that an opportunity can be afforded to both the parties to amend their pleadings properly and to add the parties, if any, if they intend to and to give further opportunity to adduce evidence after such amendment, if any, or addition of parties, so that the matter will be at large and can be effectively adjudicated upon by the Tribunal. For the above reasons, the judgment of the Tribunal and the Judgment of the Special Court in appeal are liable to be set aside.

The Writ Petitions filed hereby are allowed and the impugned judgments are set aside and the matter is remitted to the Special Tribunal for fresh disposal in the light of the observations made *inter alia* in the order. The Special Tribunal may make every endeavour to dispose of the case as expeditiously as possible within a period of six months from the date of receipt of records. Both parties are directed to bear their respective costs.

T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

09th August, 2006.

skmr